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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Norman J. Gale, Jr.
Attorney, South Alabama Utilities
Executive Center II
917 Western America Circle, Suite 205
Mobile, Alabama 36609

Utility Boards – Loans – Equipment –
Bonds – Mobile County

Pursuant to section 11-50-314(a) of the Code of Alabama, the Utility Board of the City of Citronelle may not borrow money in a manner that does not involve the issuance of interest-bearing bonds.

Dear Mr. Gale:

This opinion of the Attorney General is issued in response to your request on behalf of South Alabama Utilities.

QUESTION

May the Utility Board of the City of Citronelle (“South Alabama Utilities” or “Utility Board”) borrow money in a manner that does not involve the issuance of interest-bearing bonds, and if so, may it do so through the use of a line of credit?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Utility Board seeks to establish a line of credit for the purpose of having immediate access to funds that would be used as working capital and/or to fund equipment purchases. The advances on the line of credit would be payable for up to five years, depending on the purpose of the loan. Further, the loan would be unsecured when used as working capital, but the loan would be secured by equipment purchases when the loan was used to purchase equipment. Lastly, you noted that none of the borrowing would be evidenced by interest-bearing revenue bonds.

The Utilities Board of the City of Citronelle, d.b.a. South Alabama Utilities, is a public utilities corporation established pursuant to section 11-50-310 through 11-50-324 of the Code of Alabama. ALA. CODE § 11-50-310 to 11-50-324 (2008, Supp. 2014). Section 11-50-314 of the Code sets out the powers of the corporation generally. Subsections (a)(5) and (a)(6) of section 11-50-314 respectively state the following:

(5) To borrow money for any corporate function, use, or purpose ***and to issue in evidence of the borrowing interest-bearing bonds*** payable solely from the revenues derived from the operation of any one or more of its systems (regardless of the system or systems for the benefit of or with respect to which such borrowing may be made);

(6) To pledge for payment of its bonds any revenues from which such bonds are made payable and to mortgage, pledge, or otherwise convey as security for such bonds the system or systems the revenues from which are so pledged[.]

ALA. CODE § 11-50-314(a)(5) & (a)(6) (2008) (emphasis added).

Subsection (a)(5) of section 11-50-314 states that the Utility Board may borrow money, but the Utility Board is required to issue bonds as evidence of the indebtedness. Based upon the wording used in section 11-50-314(a)(5) and (a)(6), the Legislature limited indebtedness to an amount that could be sustained by the revenues derived from the operation of the Utility Board. *See, generally, Campbell v. Water Works & Sanitary Sewer Bd. Of City of Montgomery*, 270 Ala. 33, 36, 115 So. 2d 519, 522 (1959).

Section 11-50-316 and 11-50-317 reiterate the concept that interest bearing bonds are to be issued when the Utility Board borrows money. These provisions state respectively as follows:

(a) ... ***Any bonds issued*** by such corporation ***may*** thereafter at any time (whether before, at, or after the maturity thereof) and from time to time ***be refunded by the issuance of refunding bonds***, which may be sold by such corporation at public or private sale at such price or prices as may be determined by its board of directors to be most advantageous or which may be exchanged for the bonds to be refunded. The corporation may pay all expenses, premiums, and commissions which its

board of directors may deem necessary and advantageous in connection with any financing done by it. All bonds issued by such corporation shall be construed to be negotiable instruments although payable solely from a specified source. ***All debts created and bonds issued*** by any such corporation shall be solely and exclusively an obligation of the corporation and shall not create an obligation or debt of any municipality. No municipality shall pledge its faith and credit for the payment of any debt incurred or bonds issued by such corporation. ***When any such corporation shall have borrowed money and issued its bonds*** payable from the revenues of its system or systems, ***it shall charge, collect, and account for revenues from the operation of such system or systems sufficient to pay the principal of and the interest on said bonds*** as such principal and interest respectively mature, to pay the costs of operating and maintaining such system or systems, and to create and maintain any reserves or special funds which may be provided for in the proceedings authorizing the issuance of the bonds. Any such corporation shall apply all such revenues in the manner and for the purposes provided for in such proceedings.

(b) ***When the principal of and the interest on all bonds*** of such corporation payable from the revenues of any system owned by such corporation ***shall have been paid in full, then title to such system from the revenue of which the bonds are payable shall thereupon immediately vest in the municipality*** which authorized the incorporation of such corporation, and such system shall become the property of such municipality, except as otherwise provided in Section 11-50-320. When title to all property owned by any corporation organized or the certificate of incorporation of which is amended under this article shall have vested in the appropriate municipality which shall be entitled thereto under this section and Section 11-50-320, then such corporation shall thereupon stand dissolved; provided, that, if at any time any such corporation does not have any bonds outstanding (regardless of whether it has ever issued any bonds), its board of directors may adopt a resolution, which shall be duly entered on its minutes, declaring that such corporation shall be dissolved; and, upon the filing for record of a certified copy of such

resolution in the office of the judge of probate of the county wherein the certificate of incorporation of such corporation was filed, such corporation shall stand dissolved, whereupon title to any property and assets then owned by such corporation shall, except as otherwise provided in Section 11-50-320, vest in the municipality which authorized the incorporation of such corporation. The formation of one or more corporations under the provisions of this article shall not prevent the subsequent formation hereunder of another corporation or corporations.

ALA. CODE § 11-50-316 (2008) (emphasis added).

Any bonds issued by a corporation organized under this article *for any purpose for which it is authorized by law to borrow money and issue its bonds*, without regard to the system for the benefit of or with respect to which such bonds may be issued, may be made payable out of the revenues from all systems owned by the corporation or out of the revenues from any one or more systems owned by the corporation, and *any such corporation may pledge for the payment of any of its bonds the revenues from which such bonds are payable* and may mortgage, pledge, or otherwise convey as security for such bonds the system or systems the revenues from which are so pledged.

ALA. CODE § 11-50-317 (2008) (emphasis added). Reading these provisions *in pari materia*, it is the opinion of this Office that a utility board established pursuant to these provisions may not borrow money in a manner that does not involve the issuance of interest-bearing bonds.

Our research reveals no statutory authority that permits the Utility Board to borrow money outside or independent of the issuance of interest-bearing bonds. Revenue bonds of this nature were established as a mechanism to prevent municipalities from incurring debt in excess of its debt limit. *See, generally, Smith v. Town of Guin*, 229 Ala. 61, 63 (Ala. 1934). As such, once all bonds of a utility board have been paid in full, title to the utility board vests in the municipality. ALA. CODE § 11-50-316(b) (2008); *Water Works Board of the Town of Bear Creek v. Town of Bear Creek*, 70 So. 3d 1186, 1190-91 (Ala. 2011).

The debt structure contemplated in your inquiry is not something expressly authorized in the present statutory language. Accordingly, it is the

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opinion of this Office that the Utility Board of the City of Citronelle may not borrow money in a manner that does not involve the issuance of interest-bearing bonds. Nothing in this opinion is meant to suggest that a Utility Board created pursuant to section 11-50-310, *et seq.*, of the Code may not borrow money directly from a bank or other lender; such loan, however, must be structured as an issue of interest-bearing revenue bonds, as provided in section 11-50-314 of the Code.

CONCLUSION

Pursuant to section 11-50-314(a) of the Code, the Utility Board of the City of Citronelle may not borrow money in a manner that does not involve the issuance of interest-bearing bonds.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script, reading "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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